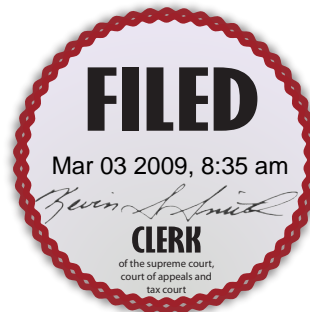


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD CASSETTY,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-0808-CR-493

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Annie Christ-Garcia, Judge
Cause No. 49G17-0805-FD-104331

March 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Donald “Joe” Cassetty appeals his conviction for battery with a deadly weapon as a Class C felony. Cassetty contends the evidence is insufficient to support his conviction because the victim’s testimony is incredibly dubious. Finding that the testimony is not incredibly dubious and sufficient to support his conviction, we affirm the judgment of the trial court.

Facts and Procedural History

On May 7, 2008, Cassetty and his girlfriend of two years, Elizabeth Crawford, returned to their Marion County home after an evening out drinking at a bar. Upon arriving home, Cassetty passed out. Crawford then left, using Cassetty’s truck to drive her son to a motel. When Crawford returned home once again, she found Cassetty sitting in a chair in the dark. Cassetty demanded to know where his truck was, and Crawford replied that it was out front. Cassetty asked Crawford to give him the keys, and she refused because he was intoxicated. The two then struggled, and Cassetty took the kitchen knife that Crawford had been carrying on her person. Cassetty then lunged at Crawford with the knife, cursing at her. As Cassetty approached her, Crawford lifted her leg to shield herself, and Cassetty stabbed her in the leg with the kitchen knife. As the two continued to struggle, Cassetty inflicted numerous scratches and bruises on Crawford, including bruises on her arms and scratches on her face and in her ear.

Crawford fled, using the truck to drive to the home of her sister, who lived nearby. Cassetty had jumped into the cab of the truck, and as she drove, he cursed at her and threatened her. Upon arriving at her sister’s home, Crawford discovered that her sister

was not there. She then went to a neighbor and asked to borrow a phone so that she could call the police. Meanwhile, Cassetty left the scene and returned home. When the police arrived at Cassetty's home, they discovered Cassetty standing in front of his truck with the kitchen knife wrapped in a cloth in his pocket, and they arrested him.

The State charged Cassetty with criminal recklessness as a Class D felony,¹ battery as a Class A misdemeanor,² and domestic battery as a Class A misdemeanor.³ The State later amended the charging information to add battery with a deadly weapon as a Class C felony.⁴ Cassetty waived his right to a jury trial. At Cassetty's bench trial, Crawford testified that Cassetty stabbed her in the leg. Cassetty's counsel cross-examined Crawford about whether the knife Cassetty used to stab her was in her possession when she came back to the home after taking the truck. Crawford first answered that she did not have the knife in her possession when she returned. Upon further questioning, Crawford admitted that the knife was in her possession and that it was her general practice to take a knife to the bar. Crawford also admitted that even though she was taking Klonopin and Prozac and was not supposed to be drinking, she had probably consumed ten beers at the bar. When Cassetty's counsel asked Crawford whether Cassetty had been trying to disarm her and accidentally stabbed her in the struggle, Crawford said no. After the State rested, the trial court granted Cassetty's motion for judgment on the evidence for the domestic battery charge for a failure to

¹ Ind. Code § 35-42-2-2(c)(2).

² Ind. Code § 35-42-2-1(a)(1).

³ Ind. Code § 35-42-2-1.3(a).

⁴ I.C. § 35-42-2-1(a)(3).

prove the two were living in a spouse-like relationship. At the conclusion of the evidence, the trial court found Cassetty guilty of battery with a deadly weapon as a Class C felony, criminal recklessness as a Class D felony, and battery as a Class A misdemeanor. The trial court entered judgment of conviction on the Class C felony battery with a deadly weapon and sentenced Cassetty to four years executed in the Department of Correction. Cassetty now appeals.

Discussion and Decision

On appeal, Cassetty argues that the evidence is insufficient to support his conviction because Crawford's testimony is incredibly dubious. We disagree.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

To support Cassetty's conviction for battery with a deadly weapon as a Class C felony, the evidence must establish that Cassetty knowingly or intentionally touched Crawford in a rude, insolent, or angry manner by means of a deadly weapon. I.C. § 35-42-2-1(a)(3).

The incredible dubiousity rule applies where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. "[A]pplication of this rule is rare and . . . the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no person could believe it." *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (citation omitted).

Cassetty contends that Crawford's testimony was incredibly dubious because "Crawford's inconsistency, the unquestionable effects of the drug and alcohol usage at the time of the incident, along with her admitted acts of theft . . . leave insufficient evidence to support Cassetty's conviction." Appellant's Br. p. 6. Although Crawford was the sole witness to testify that Cassetty had stabbed her, her testimony in this regard was unequivocal. *See Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004) ("This court has held that the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal."), *trans. denied*. She testified that Cassetty waited for her to return from her errand. When she refused to give him the keys to his truck, he attacked her and stabbed her in the leg while she was trying to shield herself. She denied that Cassetty stabbed her accidentally while trying to disarm her. This

evidence is sufficient to support his conviction. Neither the discrepancy regarding when Crawford had possession of the knife, the drug and alcohol usage, nor the use of the truck without Cassetty's permission renders her unequivocal testimony that Cassetty attacked and stabbed her incredibly dubious or inherently improbable. Further, the officer found the knife in Cassetty's pocket. The trial court found Crawford's testimony to be credible, Tr. p. 50-51, and we decline Cassetty's invitation to reweigh the evidence. We affirm the judgment of the trial court.

Affirmed.

RILEY, J., and DARDEN, J., concur.